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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,713	03/17/2006	Martin Oberhomburg	2003P01023WOUS	4393
46726 7590 11/13/2008 BSH HOME APPLIANCES CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 100 BOSCH BOULEVARD NEW BERN, NC 28562				
EXAMINER NDUBIZU, CHUKA CLEMENT				
ART UNIT		PAPER NUMBER		
3743				
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11/13/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/572,713

**Applicant(s)**

OBERHOMBURG, MARTIN

**Examiner**

CHUKA C. NDUBIZU

**Art Unit**

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

Applicant's amendment filed on October 29 2007 is acknowledged.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
1. Claims 12-15, 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Repper et al 2005/0089809. Repper teaches the invention as claimed (figs 1-3) a gas cooking surface, comprising: at least one gas burner 114; a gas supply 123 coupled to said gas burner for supplying gas thereto; a control device 111 for adjusting the heating capacity stages of said gas burner; said gas burner depending on said adjusted heating capacity stage, operates in one of a continuous mode in which said gas is

supplied continuously to said gas burner (page 4, para [0042, 0043]) or a clocked mode in which said gas burner is supplied with said gas in an intermittent manner (page 4 para [0044]); said control device including a touch contact 119, 115 for switching between said heating capacity stages (see fig 1); said touch contact switches said heating capacity stages associated with said continuous mode and also with said clocked mode (page 2 para [0016]); and said control device automatically controls said burner to a starting heating capacity stage in which said gas burner operates in said continuous mode when said gas burner is switched on by said touch contact (page 4 para [0044]); (claim 13) wherein said gas burner is switched on by a first actuation of said touch contact (page 5 para [0053]); (claim 14) wherein said starting heating capacity stage automatically adjusted by said control device is a minimal heating capacity stage in said continuous mode (page 4 para [0044]); (claim 15) wherein said touch contact having a plus button 203 (right) for increasing the heating capacity and a minus button 203 (left) for reducing said heating capacity. (claim 21) wherein said gas burner operates in an upper heating capacity range in said continuous mode and in a lower heating capacity range in said clocked mode (page 4 para [0043, line 10-12; para [0044 line 1-3]); (claim 18) the cooking surface including touch contact having plus button 203 (fig 2) for increasing the heating capacity, and minus button 203 (on the left) for reducing the heating capacity wherein control system is capable of switching off the gas burner by simultaneously actuating said plus button and the minus button (page 4 para [0044]); (claim 19, 20) the cooking surface including touch contact having plus button 203 (fig 2) for increasing the heating capacity, and minus button 203 (on the left)

for reducing the heating capacity wherein control system is capable of switching off the gas burner by actuating said (minus 19) plus button in a (minimum 19) maximum heating power stage in said clocked mode (page 4 para [0044]).

With regard to claim 12, the control device operating to control the burner to starting heating capacity stage irrespective of any conflicting control instructions that may have inputted by a user via said touch contact is deemed a matter of design choice. The Applicant disclosed in page 2 lines 9-10 of the Specification that the reason for this limitation is to avoid any confusion as to whether there may be a fault in the gas burner during an "off" time of the gas burner in the clocked mode. Repper et al addresses this concern by requiring that in the clocked mode the hot surface igniter is always on to ignite any available gas, the flame sensor is always on to sense the flame and the gas flow is set such that flame being generated should be at a level that can be maintained without self-extinguishment (page 4 [0044]). Furthermore if there is any error the controller is set to automatically turn off the safety valve 112, the igniter and the sensor and to send out a visual and audio signal (page 4 [0044]). Therefore there is no room for one of ordinary skill in the art to be confused. Repper also teaches first starting the burner at the start heating capacity and then using the minus button to reduce the power to any simmering level (page para [0053]).

2. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Repper in view of Damrath et al 5,938,425. Repper teaches the invention as claimed and as discussed above except for the cooking surface wherein said gas

burner is switched on by a first actuation of at least one of said plus button and said minus button.

Damrath discloses a gas cooking surface (fig 1) comprising: one gas burner 2; a gas supply 1 coupled to said gas burner for supplying gas thereto; a control device 4 for adjusting the heating capacity stages of said gas burner; wherein said gas burner is switched on by a first actuation of at least one of said plus button and said minus button (one button turns gas on, column 8 line 47-55).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Repper's gas cooking surface by including all the limitations taught by Damrath and recited above in order to provide a cooking surface where the control device can be made inexpensively using commercially available components as taught by Damrath (column 7 line 1,2).

3. Claims 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Repper in view of Frasnetti et al 5,924,857. Repper teaches the invention as claimed and as discussed above. However, Repper does not teach a gas cooking surface, wherein said gas burner is switched off by actuating said minus button in a minimum heating power stage in said clocked mode.

Frasnetti discloses a controlled gas burner (fig 1), wherein said gas burner is switched off by actuating the minus button in a minimum heating power stage (column 2 line 35-48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Repper's gas cooking surface by including all the limitations taught by Frasnetti and recited above in order to provide a cooking surface where the control device can deliver both high and low heat output and at the same time capable of fine precise adjustment over the entire span of cooking levels as taught by Repper (page 2 para [0008] line 1-5).

With regard to the method of operation claims 22 to 31, having met the structural limitations in Repper in view of Damrath and Frasnetti as discussed above, the limitations of method of operation recited in claims 22 to 31 are obviously met.

### ***Response to Arguments***

Applicant's arguments filed on October 29 2007 have been fully considered but they are not persuasive. Detail response to the argument is presented above.

After due consideration it is determined that Applicant's claims do not distinguish Applicant's invention over the prior art of record.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHUKA C. NDUBIZU whose telephone number is (571)272-6531. The examiner can normally be reached on Monday - Friday 8.30 - 4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on 571-272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a



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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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